

NOTICE

*Memorandum decisions of this Court do not create legal precedent. See Alaska Appellate Rule 214(d) and Paragraph 7 of the Guidelines for Publication of Court of Appeals Decisions (Court of Appeals Order No. 3). Accordingly, this memorandum decision may not be cited as binding authority for any proposition of law.*

IN THE COURT OF APPEALS OF THE STATE OF ALASKA

KIRA GRAY,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-12491  
Trial Court No. 3PA-14-2552 CI

MEMORANDUM OPINION

No. 6621 — April 18, 2018

Appeal from the Superior Court, Third Judicial District, Palmer,  
Eric Smith, Judge.

Appearances: Elizabeth D. Friedman, Redding, California,  
under contract with the Office of Public Advocacy, for the  
Appellant. Eric A. Ringsmuth, Assistant Attorney General,  
Office of Criminal Appeals, Anchorage, and Jahna Lindemuth,  
Attorney General, Juneau, for the Appellee.

Before: Mannheimer, Chief Judge, Allard, Judge, and Suddock,  
Superior Court Judge.\*

Judge MANNHEIMER.

Kira Gray appeals the superior court's dismissal of her petition for post-conviction relief. The superior court dismissed the petition because it was filed after the

---

\* Sitting by assignment made pursuant to Article IV, Section 16 of the Alaska Constitution and Administrative Rule 24(d).

expiration of the applicable statute of limitations, AS 12.72.020(a)(3)(A), and because the court rejected Gray's arguments that the limitation period should be relaxed.

For the reasons we are about to explain, we uphold the superior court's decision.

Several years ago, Gray was convicted of kidnapping and first-degree murder. This Court affirmed her convictions in an opinion issued on December 9, 2011. *See Gray v. State*, 267 P.3d 667 (Alaska App. 2011). Gray then petitioned the Alaska Supreme Court to hear her case. That petition was denied four months later, on April 17, 2012.

Under the provisions of AS 12.72.020(a)(3)(A), if Gray wished to seek post-conviction relief, she had to initiate this litigation within one year of the supreme court's denial of her petition for hearing — *i.e.*, by April 17, 2013.

Gray filed an application for post-conviction relief on October 16, 2014. When the State moved to dismiss this application as untimely, Gray conceded that her application for post-conviction relief was late, but she argued that the filing deadline should be relaxed because (1) she remained unaware until July 2014 that her convictions had been affirmed on appeal, and because (2) she suffered from unspecified "mental health issues" which prevented her from filing her petition on time.

Under AS 12.72.040, it was Gray's burden to prove these factual assertions by clear and convincing evidence.

The superior court held an evidentiary hearing to evaluate the merits of Gray's claims. Following this hearing, the court issued an order dismissing Gray's petition for post-conviction relief as untimely.

With regard to Gray's claim that she remained unaware that her convictions had been affirmed, the superior court found that this claim was "[not] particularly credible". The court noted that a copy of this Court's decision was found among Gray's

documents at the Hiland Mountain prison, along with correspondence from her attorneys. The court therefore concluded that, at a minimum, “Ms. Gray really was not paying very close attention to her appeal and ... did not focus on what was going on.”

With regard to Gray’s purported mental health issues, the court noted that Gray “did not identify the nature of those mental health issues”, and the court concluded that, whatever issues Gray had, “there was no evidence that those issues precluded her from filing [the application for post-conviction relief].” The court further noted that Gray’s claim that she remained passively ignorant of the status of her case was rebutted by evidence that Gray was an “assertive and influential” prison inmate.

In sum, the superior court concluded that Gray had failed to demonstrate that equity required a tolling or an extension of the one-year statute of limitations.

We have reviewed the record, and it supports the superior court’s findings. We accordingly AFFIRM the judgement of the superior court.